

APPENDIX N
Alabama First Class Pre-K Program
Alabama's Mandatory Child Abuse and Neglect Law

CODE OF ALABAMA

TITLE 26. INFANTS AND INCOMPETENTS. CHAPTER 14. REPORTING OF CHILD ABUSE OR NEGLECT.

§ 26-14-1. Definitions.

For the purposes of this chapter, the following terms shall have the meanings respectively ascribed to them by this section:

(1) Abuse. Harm or threatened harm to a child's health or welfare. Harm or threatened harm to a child's health or welfare can occur through non-accidental physical or mental injury, sexual abuse or attempted sexual abuse or sexual exploitation or attempted sexual exploitation. "Sexual abuse" includes the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in any sexually explicit conduct or any simulation of the conduct for the purpose of producing any visual depiction of the conduct; or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children as those acts are defined by Alabama law. "Sexual exploitation" includes allowing, permitting, or encouraging a child to engage in prostitution and allowing, permitting, encouraging or engaging in the obscene or pornographic photographing, filming, or depicting of a child for commercial purposes.

(2) Neglect: Negligent treatment or maltreatment of a child, including the failure to provide adequate food, medical treatment, supervision, clothing, or shelter.

(3) Child. A person under the age of 18 years.

(4) Duly constituted authority. The chief of police of a municipality or municipality and county; or the sheriff, if the observation of child abuse or neglect is made in an unincorporated territory; or the Department of Human

Resources; or any person, organization, corporation, group, or agency authorized and designated by the Department of Human Resources to receive reports of child abuse and neglect; provided that a "duly constituted authority" shall not include an agency involved in the acts or omissions of the reported child abuse or neglect.

§ 26-14-2. Purpose of chapter.

In order to protect children whose health and welfare may be adversely affected through abuse and neglect, the legislature hereby provides for the reporting of such cases to the appropriate authorities. It is the intent of the legislature that, as a result of such efforts, and through the cooperation of state, county, local agencies and divisions of government, protective services shall be made available in an effort to prevent further abuses and neglect, to safeguard and enforce the general welfare of such children, and to encourage cooperation among the states in dealing with the problems of child abuse.

§ 26-14-3. Mandatory reporting.

(a) All hospitals, clinics, sanitariums, doctors, physicians, surgeons, medical examiners, coroners, dentists, osteopaths, optometrists, chiropractors, podiatrists, nurses, school teachers and officials, peace officers, law enforcement officials, pharmacists, social workers, day care workers or employees, mental health professionals, members of the clergy as defined in Rule 505 of the Alabama Rules of Evidence, or any other person called upon to render aid or medical assistance to any child, when the child is known or suspected to

be a victim of child abuse or neglect, shall be required to report, or cause a report to be made of the same, orally, either by telephone or direct communication immediately, followed by a written report, to a duly constituted authority.

(b) When an initial report is made to a law enforcement official, the official subsequently shall inform the Department of Human Resources of the report so that the department can carry out its responsibility to provide protective services when deemed appropriate to the respective child or children.

(c) When the Department of Human Resources receives initial reports of suspected abuse or neglect involving discipline or corporal punishment committed in a public or private school or suspected abuse or neglect in a state-operated child residential facility, the Department of Human Resources shall transmit a copy of school reports to the law enforcement agency and residential facility reports to the law enforcement agency and the operating state agency which shall conduct the investigation. When the investigation is completed, a written report of the completed investigation shall contain the information required by the State Department of Human Resources which shall be submitted by the law enforcement agency or the state agency to the county department of human resources for entry into the state's central registry.

(d) Nothing in this chapter shall preclude interagency agreements between departments of human resources, law enforcement, and other state agencies on procedures for investigating reports of suspected child abuse and neglect to provide for departments of human resources to assist law enforcement and other state agencies in these investigations.

(e) Any provision of this section to the contrary notwithstanding, if any agency or authority investigates any report pursuant to this section and the report does not result in a conviction, the agency or authority shall expunge any record of the information or report and any data developed

from the record.

(f) Subsection (a) to the contrary notwithstanding, a member of the clergy shall not be required to report information gained solely in a confidential communication privileged pursuant to Rule 505 of the Alabama Rules of Evidence which communication shall continue to be privileged as provided by law.

§ 26-14-5. Contents of reports.

The reports provided for in this chapter shall state, if known, the name of the child, his whereabouts, the names and addresses of the parents, guardian or caretaker and the character and extent of his injuries. The written report shall also contain, if known, any evidence of previous injuries to said child and any other pertinent information which might establish the cause of such injury or injuries, and the identity of the person or persons responsible for the same.

§ 26-14-6. Temporary protective custody.

A police officer, a law enforcement official or a designated employee of the State or County Department of Human Resources may take a child into protective custody, or any person in charge of a hospital or similar institution or any physician treating a child may keep that child in his custody, without the consent of the parent or guardian, whether or not additional medical treatment is required, if the circumstances or conditions of the child are such that continuing in his place of residence or in the care and custody of the parent, guardian, custodian or other person responsible for the child's care presents an imminent danger to that child's life or health. However, such official shall immediately notify the court having jurisdiction over juveniles of such actions in taking the child into protective custody; provided, that such custody shall not exceed 72 hours and that a court of competent jurisdiction and the Department of Human Resources shall be notified immediately in order that child-protective proceedings may be initiated. During such period of temporary custody, the director of the county department of human resources

may give or cause to be given effective consent for medical, dental, health and hospital services for any abused or neglected child.

§ 26-14-6.1. Duties and responsibilities for investigation of reports.

The duty and responsibility for the investigation of reports of suspected child abuse or neglect shall be as follows:

- (1) Reports of suspected child abuse or neglect involving disciplinary or corporal punishment committed in a public or private school or kindergarten shall be investigated by law enforcement agencies.
- (2) Reports of suspected child abuse or neglect committed in a state-operated child residential facility shall be investigated by law enforcement agencies.
- (3) All other reports of suspected child abuse and neglect shall be investigated by the Department of Human Resources.

§ 26-14-7. Duties of Department of Human Resources.

- (a) The State or County Department of Human Resources shall make a thorough investigation promptly upon either the oral or written report. The primary purpose of such an investigation shall be the protection of the child.
- (b) The investigation, to the extent that is reasonably possible, shall include:
 - (1) The nature, extent and cause of the child abuse or neglect;
 - (2) The identity of the person responsible therefor;
 - (3) The names and conditions of other children in the home;
 - (4) An evaluation of the parents or person responsible for the care of the child;
 - (5) The home environment and the relationship of the child or children to the parents or other persons responsible for their care; and
 - (6) All other data deemed pertinent.

(c) The investigation may include a visit to the child's home, an interview with the subject child, and may include a physical, psychological or psychiatric examination of any child or children in that home. If the admission to the home, school or any other place that the child may be, or permission of the parent or other persons responsible for the child or children, for the physical, psychological or psychiatric examination, cannot be obtained, then a court of competent jurisdiction, upon cause shown, shall order the parents or persons responsible and in charge of any place where the child may be to allow the interview, examinations and investigation. If, before the examination is complete, the opinion of the investigators is that immediate removal is necessary to protect a child or children from further abuse or neglect, a court of competent jurisdiction, on petition by the investigators and with good cause being shown, shall issue an order for temporary removal and custody.

(d) The county department of human resources shall make a complete written report of the investigation, together with its recommendations. Such reports may be made available to the appropriate court, the district attorney and the appropriate law enforcement agency upon request. The county department of human resources shall make a written report or case summary, together with services offered and accepted to the state's central registry on forms supplied by the registry for that purpose.

§ 26-14-7.1. Due process rights for persons under investigation by department.

Any person who comes under investigation by the Department of Human Resources for the abuse or neglect of a child or children and who is employed by, serves as a volunteer for, holds a license or certificate for, or is connected with any facility, agency, or home which cares for and controls any children and which is licensed, approved, or certified by the state, operated as a

state facility, or any public, private, or religious facility or agency that may be exempt from licensing procedures shall be granted the following due process rights by the Department of Human Resources:

- (1) The department shall notify the alleged perpetrator that an investigation has commenced against him after such investigation has officially begun in accordance with written policies established by the Department of Human Resources. The notice shall be in writing and shall state the name of the child or children allegedly abused, the date or dates that the alleged abuse is thought to have occurred, and the substance of the person's actions which are alleged to be abusive. The department shall establish and maintain written policies outlining the specifics of such notification and other policies deemed necessary and prudent by the department to inform the alleged perpetrator of his rights and the procedures utilized by the department involving child abuse and neglect investigations.
- (2) If the department conducts an investigation relating to child abuse/neglect, the alleged perpetrator shall be notified of the investigator's conclusions.
- (3) If the department's investigators conclude that child abuse/neglect is indicated, an investigative hearing may be held to confirm or reject the investigators' conclusions.
- (4) The alleged perpetrator shall be given ten departmental working days from the receipt of the notification of the investigator's conclusions to request a hearing, and such request must be in writing. If no such request is received in the department's office within ten departmental working days, the alleged perpetrator's opportunity for a hearing shall be considered waived by the department.
- (5) The employer of an alleged perpetrator shall not be notified of the investigator's conclusions prior to a hearing or its waiver unless, in the opinion of the department's investigators, a child is in danger of abuse or neglect; in such case, any

person in a position to discover, prevent or protect the child from his abuse or neglect may be informed of information gathered in the investigation prior to a requested investigative hearing for the alleged perpetrator.

- (6) The alleged perpetrator shall be notified of the date, time, and place of any investigative hearing. Such hearing shall not be open to the public.
- (7) The alleged perpetrator shall have the following rights at any departmental investigative hearing:
 - a. The right to present his case himself or be represented by legal counsel or any other person.
 - b. The right to present written evidence, oral testimony, and witnesses.
 - c. The right to be provided by the department a short and plain written statement of the matters asserted which will be presented at the hearing.
 - d. The right to review and copy at cost any written or recorded statement made by the alleged perpetrator to departmental personnel in the course of the child abuse/neglect investigation. This request must be made prior to the date for the hearing.
 - e. The right to review and copy at cost, before or during the hearing, the written material and other evidence in possession of the department which will be placed into evidence at the hearing.
 - f. The right to inspect any exculpatory evidence which may be in the possession of departmental investigators, and the right to be informed of such evidence if known by departmental investigators before the hearing; provided, that a request for such evidence is made at least five working days prior to the date set for the hearing.
 - g. The right to review and copy at cost all non-confidential department documents pertinent to the case, including written policies and rights.
 - h. The right to cross-examine witnesses testifying at the hearing.

i. The right to request issuance of subpoenas to witnesses and compel attendance. This request must be received no later than ten calendar days prior to the hearing, unless a shorter time is agreed upon by the hearing officer.

j. The right to review and copy at cost all documents in the official hearing file maintained by the hearing officer.

k. The right to have a hearing officer appointed who shall be disinterested, fair, and impartial.

(8) The Department of Human Resources or its investigative hearing officers shall have the power and authority to issue subpoenas to compel attendance by and production of documents from any witness. Subpoenas may be served in the same manner as subpoenas issued out of any circuit court. Where any witness has been summoned by the Department of Human Resources, its commissioner or any of his agents, and said witness refuses to appear, testify, or produce records or documents as requested; then any circuit court in this state, or any judge thereof, on application, may issue an attachment for such person and compel him to comply with such order and the court or judge shall have power to punish for contempt in cases of disobedience of such order.

(9) The Department of Human Resources shall establish policies and written guidelines for the conduct and procedures involved in an investigative hearing. At such hearing, the fact that there was a finding by a juvenile court judge or by a criminal court that child abuse or neglect has occurred shall be presumptive evidence that the report should be marked indicated.

(10) The hearing officer shall notify the alleged perpetrator in writing of the hearing officer's decision.

(11) Results of investigative hearings:

a. If the hearing officer concludes that child abuse and/or neglect is "indicated," such findings and evidence shall be filed with the appropriate district attorney and other law enforcement

officials which the department may deem necessary.

b. The alleged perpetrator's employer or licensing/certifying agency or group may also be notified of the "indicated" findings. Such notification shall be marked "Confidential" and "To Be Used Only For The Purpose Of Discovery Or Preventing Child Abuse." The department shall establish written policies for notification of employers, prospective employers and licensing/certifying agencies or groups.

§ 26-14-7.2. Child denied medical treatment due to parents' religious beliefs.

(a) When an investigation of child abuse or neglect by the Department of Human Resources determines that a parent or legal guardian legitimately practicing his or her religious beliefs has not provided specific medical treatment for a child, the parent or legal guardian shall not be considered a negligent parent or guardian for that reason alone. This exception shall not preclude a court from ordering that medical services be provided to the child when the child's health requires it.

(b) The department may, in any case, pursue any legal remedies, including the initiation of legal proceedings in a court of competent jurisdiction, as may be necessary to provide medical care or treatment for a child when the care or treatment is necessary to prevent or remedy serious harm to the child, or to prevent the withholding of medically indicated treatments from disabled infants with life-threatening conditions. Upon application by the department, the court may issue pre-litigation or pretrial discovery orders for persons, medical records, and other documents or materials.

§ 26-14-8. Statewide central registry.

(a) For the purposes of this section, the following words shall have the following meanings, respectively:

(1) Indicated. When credible evidence and professional judgment substantiates that an

Alleged perpetrator is responsible for child abuse or neglect.

(2) Not indicated. When credible evidence and professional judgment does not substantiate that an alleged perpetrator is responsible for child abuse or neglect.

(b) The Department of Human Resources shall establish a statewide central registry for reports of child abuse and neglect made pursuant to this chapter. The central registry shall contain, but shall not be limited to:

(1) All information in the written report;

(2) Record of the final disposition of the report, including services offered and services accepted;

(3) The names and identifying data, dates and circumstances of any persons requesting or receiving information from the registry; provided, however, that requests for information and responses where no report exists may be destroyed after three years from the date of the request;

(4) The plan for rehabilitative treatment; and

(5) Any other information which might be helpful in furthering the purposes of this chapter.

(c) The Department of Human Resources shall establish and enforce reasonable rules and regulations governing the custody, use and preservation of the reports and records of child abuse and neglect. Child abuse and neglect reports and records shall be limited to the purposes for which they are furnished and by the provisions of law under which they may be furnished. The reports and records of child abuse and neglect and related information or testimony shall be confidential, and shall not be used or disclosed for any purposes other than:

(1) To permit their use to prevent or to discover abuse or neglect of children through the information contained therein, except reports or records in cases determined to be "not indicated"

shall not be used or disclosed for purposes of employment or other background checks; or

(2) For investigation of child abuse or neglect by the police or other law enforcement agency; or

(3) For use by a grand jury upon its determination that access to such reports and records is necessary in the conduct of its official business; or

(4) For use by a court where it finds that such information is necessary for the determination of an issue before the court; or

(5) For use by any person engaged in bona fide research who is authorized to have access to such information by the Commissioner of the Department of Human Resources; or

(6) For use by any person authorized by a court to act as a representative for an abused or neglected child who is the subject of a report; or

(7) For use by a physician who has before him a child whom he reasonably suspects may be abused or neglected; or

(8) For use by an attorney or guardian ad litem in representing or defending a child or its parents or guardians in a court proceeding related to abuse or neglect of said child; or

(9) For use by federal, state, or local governmental entities, social service agencies of another state, or any agent of such entities, having a need for the information in order to carry out their responsibilities under law to protect children from abuse and neglect; or

(10) For use by child abuse citizen review or quality assurance or multidisciplinary review panels; or

(11) For use by child fatality review panels; or

(12) For public disclosure of the findings or information about the case of child abuse or neglect which has resulted in a child fatality or near fatality; the term "near fatality" means an act that, as certified by a physician, places the child in serious or critical condition. Information identifying by name persons other than the victim shall not be disclosed.

(d) The names of persons or information in the investigative report placed on the state's central registry which may be made available to the alleged perpetrator's employer, prospective employer, or others are those cases that the Department of Human Resources or the investigative hearing officer has determined child abuse or neglect to be indicated.

(e) In the case of any child abuse or neglect investigation which is determined to be "not indicated," the alleged perpetrator may request after five years from the completion of the investigation that his or her name be expunged from the central registry so long as the Department of Human Resources has received no further reports concerning the alleged perpetrator during said five years, at which time the department shall expunge said name.

(f) Nothing in this section shall be construed as restricting the ability of a department to refuse to disclose identifying information concerning the individual initiating a report or complaint alleging suspected instances of child abuse or neglect, except that the department may not refuse such a disclosure in cases in which a court orders such disclosure after the court has reviewed, in camera, the record of the department related to the report or complaint and has determined that it has reason to believe that the person making the report knowingly made a false report.

(g) Any person receiving reports or records of child abuse or neglect or related information under this section shall maintain the confidentiality of the documents and information and not disclose it except as authorized by law.

(h) Any violation of the provision of confidentiality shall be a Class A misdemeanor.

§ 26-14-9. Immunity from liability for actions under chapter.

Any person, firm, corporation or official, including members of a multidisciplinary child protection team, quality assurance team, child

death review team, or other authorized case review team or panel, by whatever designation, participating in the making of a good faith report in an investigation or case review authorized under this chapter or other law or department practice or in the removal of a child pursuant to this chapter, or participating in a judicial proceeding resulting therefrom, shall, in so doing, be immune from any liability, civil or criminal, that might otherwise be incurred or imposed.

§ 26-14-10. Doctrine of privileged communications not grounds for exclusion of evidence as to child's injuries.

The doctrine of privileged communication, with the exception of the attorney-client privilege, shall not be a ground for excluding any evidence regarding a child's injuries or the cause thereof in any judicial proceeding resulting from a report pursuant to this chapter.

§ 26-14-11. Appointment of attorney to represent child.

In every case involving an abused or neglected child which results in a judicial proceeding, an attorney shall be appointed to represent the child in such proceedings. Such attorney will represent the rights, interests, welfare and well-being of the child, and serve as guardian ad litem for said child.

§ 26-14-12. Establishment of regulations by department of human resources.

The State Department of Human Resources may establish such regulations as may be necessary to implement this chapter and to encourage cooperation with other states in exchanging reports to effect a national registration system.

§ 26-14-13. Penalty for failure to make required report.

Any person who shall knowingly fail to make the report required by this chapter shall be guilty of a misdemeanor and shall be punished by a sentence of not more than six months' imprisonment or a fine of not more than \$500.00.